A **CHIAN SWEE ONG**

v.

PP

B FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
HASHIM YUSOFF FCJ
JAMES FOONG FCJ
[CRIMINAL APPEAL NO: 05-68-2009(B)]
C 26 APRIL 2010

CRIMINAL PROCEDURE: *Police investigation - Cautioned statement - Whether caution properly administered to accused - Whether cautioned statement rightly admitted by trial judge - Criminal Procedure Code,*
D *s. 113*

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Death of a human being - Failure to put name of deceased in the charge - Whether rendered charge defective to warrant acquittal*

E ***CRIMINAL LAW:*** *Penal Code - Section 302 - Murder - Defence - Provocation - Whether appellant ought reasonably not to have lost self control when victim rejected and mocked him - Whether there was provocation as envisaged in Exception 1 to s. 300 Penal Code*

F The appellant was charged with, convicted and sentenced to death by the High Court under s. 302 of the Penal Code ("PC") for the offence of murdering a prostitute from Uzbekistan ('Venera Ziatdinova') by stabbing her to death. His appeal to the Court of Appeal was dismissed. Hence, this appeal. The appellant submitted
G that (i) the cautioned statement of the appellant (P16) was wrongly admitted by the trial judge because the caution was defective; (ii) that the amended charge was defective since the name of the deceased was not mentioned; (iii) the murder charge should have been reduced to one of manslaughter under s. 304 PC because the
H appellant had surrendered himself to the police which fact clearly mitigated against a guilty mind.

Held (dismissing the appeal; affirming conviction and sentence) Per Hashim Yusoff FCJ delivering the judgment of the court:

I **(1)** The caution found in P16 had complied with the wordings of s. 113 Criminal Procedure Code. The fact that the oral testimony of the recording officer (PW10) did not mention the

words "... or to answer any question but anything you say, whether in answer to a question or not ..." should not render the caution statement (P16) inadmissible because his subsequent oral testimony in court should not override the contemporaneous document P16. More so in this case, PW10 had asked the appellant before the cautioned statement was recorded, in what language the appellant wished to use and the appellant replied he could speak Bahasa Malaysia. Immediately below after the wordings of the said caution, could be seen the PW10's signature on the right side and the appellant's signature on the left side. The appellant was not in any way prejudiced at the time of his giving the cautioned statement. P16 was properly admitted by the trial judge. (para 10)

(2) The wordings of s. 300 PC for murder showed that the word used to refer to the victim is 'person'. According to the *Concise Oxford Dictionary*, a 'person' is defined as 'a human being regarded as an individual'. In the instant appeal, the amended charge in Bahasa Malaysia used the words "... ke atas seorang manusia ..." in place of the words "ke atas Venora Ziatdinova". According to the *Malay-English Oxford Fajar Dictionary* the word "manusia" means "a human being". Therefore, the failure to put a particular name in the amended charge was not relevant as what was important was that a human being's life was taken. The charge in this instant appeal without naming the deceased was not defective. Further, the appellant's own cautioned statement confirmed his involvement in the commission of the offence. It was undeniable that a dead female human being was found by SP5 and her death was caused by the appellant. If a specific name was not mentioned in the murder charge, it was not defective to warrant the appellant's acquittal. (para 24)

(3) It was the appellant's submission that he had professed his undying love for the victim but she had rejected, mocked and ridiculed him. Just because the deceased had refused the appellant's confession of love for her, that would not amount to any provocation. In his despair, the appellant had turned to intense anger which led him to kill the deceased. There was no provocation as envisaged in Exception 1 to s. 300 of the Penal Code. (para 28)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu telah dituduh, disabit kesalahan dan dihukum mati oleh Mahkamah Tinggi di bawah s. 302 Kanun Keseksaan ('KS') bagi kesalahan membunuh seorang pelacur dari Uzbekistan ('Venera
B Ziatdinova') dengan menikamnya sehingga mati. Rayuan perayu di Mahkamah Rayuan ditolak. Oleh itu, rayuan ini. Perayu berhujah bahawa (i) pernyataan beramaran perayu (P16) diterima-masuk secara salah oleh hakim bicara sebab amaran adalah defektif; (ii) pertuduhan pindaan adalah defektif kerana nama simati tidak
C disebut; (iii) pertuduhan membunuh sepatutnya dikurangkan ke pertuduhan pematian orang di bawah s. 304 KS kerana perayu telah menyerah diri ke pihak polis dan fakta ini menunjukkan beliau tidak berasa bersalah.

D **Diputuskan (menolak rayuan; mengekalkan sabitan dan hukuman)**
Oleh Hashim Yusoff HMP menyampaikan penghakiman mahkamah:

(1) Amaran dijumpai di dalam P16 telah menunaikan perkataan-
E perkataan yang terdapat dalam s. 113 Kanun Tatacara Jenayah. Fakta bahawa testimoni lisan pegawai merekod (PW10) tidak menyebut perkataan-perkataan " ... atau bagi menjawab mana-mana soalan, tetapi apa-apa yang kamu katakan, sama ada dalam menjawab soalan atau sebaliknya ..." tidak membuat
F penyataan beramaran (P16) tidak boleh diterima disebabkan testimoni lisan kemudiannya di dalam mahkamah yang tidak sepatutnya mengatasi dokumen semasa P16. Lebih-lebih lagi di dalam kes ini, PW10 telah menyoal perayu sebelum penyataan beramaran dirakamkan, dalam bahasa apa perayu ingin
G mengguna dan perayu telah menjawab bahawa beliau boleh bertutur dalam Bahasa Malaysia. Di bawah perkataan-perkataan pernyataan beramaran, dapat dilihat tandatangan PW10 di bahagian kanan dan tandatangan perayu di bahagian sebelah kiri. Perayu tidak diprejudis pada masa beliau memberi
H pernyataan beramaran. PW16 telah dengan sempurnanya dimasukkan oleh hakim perbicaraan.

(2) Perkataan-perkataan s. 300 KS untuk pembunuhan menunjukkan bahawa perkataan yang digunakan untuk mangsa adalah 'orang'.
I Menurut *Concise Oxford Dictionary*, 'orang' diberi definasi sebagai 'manusia yang dianggap sebagai individu'. Di dalam rayuan ini, pertuduhan pindaan dalam Bahasa Malaysia telah menggunakan perkataan "... ke atas seorang manusia ..." untuk menggantikan

perkataan-perkataan "ke atas Venora Ziatdinova". Menurut *Malay-English Oxford Fajar Dictionary* perkataan 'manusia' bermakna "a human being". Oleh itu, kegagalan meletakkan nama tertentu di dalam pertuduhan pindaan tidak relevan kerana apa yang penting adalah nyawa seorang manusia telah diambil. Pertuduhan di dalam rayuan ini tanpa menamakan mangsa tidak defektif. Seterusnya, pernyataan beramaran perayu mengesahkan penglibatannya di dalam tindakan kesalahan itu. Tidak boleh dinafikan bahawa seorang manusia perempuan telah dijumpai oleh SP5 dan kematiannya diakibatkan perbuatan perayu. Jikalau nama spesifik tidak disebut di dalam pertuduhan membunuh, ia tidak defektif sehingga menyebabkan perayu dibebaskan.

(3) Ia adalah hujahan perayu bahawa beliau telah melafazkan perasaan cinta kepada mangsa tetapi mangsa telah menolak, mencaci dan mengejeknya. Walaupun mangsa telah menolak pengakuan cinta perayu terhadapnya, ini tidak bermakna berlakunya provokasi. Di dalam kesedihannya, perayu telah menjadi terlalu marah dan terus membunuh simati. Tiada provokasi seperti yang dijangkakan di dalam Pengecualian 1 s. 300 Kanun Keseksaan.

Case(s) referred to:
Fazal Din v. PP [1948] 1 LNS 12 HC ***(refd)***
Mohd Zaiham Mislan v. PP [2010] 1 CLJ 1 FC ***(refd)***
Poon Heong v. PP [1949] 1 LNS 59 HC ***(refd)***
PP v. Badrulsham Baharom [1987] 1 LNS 72 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 113, 156
Penal Code, ss. 300, 302, 304

Other source(s) referred to:
Ratanlal & Dhirajlal's, *Law of Crimes*, vol 2, 2007, p 1702

For the appellant - Awang Armadajaya Awg Mahmud DPP
For the respondent - Karpal Singh (Li Chi Chau with him); M/s Karpal Singh & Co

[Appeal from Court of Appeal; Criminal Appeal No: B-05-44-2006]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Hashim Yusoff FCJ:

[1] The appellant was charged with, convicted and sentenced to death by the High Court in Shah Alam, Selangor under s. 302 of
B the Penal Code ("PC") for the offence of murder. His appeal to the Court of Appeal was dismissed. Hence this appeal before us. After hearing the submissions we reserved our judgment to be given at a later date. We do so now.

C

Brief Facts

[2] The facts of this case as reproduced from the grounds of judgment of the Court of Appeal are as follows:

> On 17.12.2002 at about 6pm L/Kpl. R.A. Hirudhayaddass (PW2)
D received a call from one Mr. Lee (the appellant's counsel) who informed him that a Chinese lady (PW6) had brought her brother who allegedly had committed a crime. Within 5 minutes after that PW2 proceeded to a car-wash centre at Jalan Dato Hamzah in Klang and upon his arrival he was approached by PW6 and the appellant. PW6 told PW2 that the appellant had committed a crime
E and that the appellant was his brother.
>
> PW2 examined the appellant's body and found there was an injury on his left chest which had been treated. PW2 also observed there were scratch marks on the appellant's hand. PW2 arrested the appellant and brought him back to Balai Polis, Klang and handed
F him to ASP Mohd Sukri bin Kamar (PW4).
>
> At the Balai Polis Klang the appellant handed over a bunch of keys to PW4 and the keys were for a house at No. 11A, Jalan USJ 13/5B ("the said house"). PW4 proceeded to the said house with
G the appellant. When they arrived there they were met by Insp. Jamil bin Osman (PW5) who was already there. The said house was a double-storey terrace house. The windows of the house and the front door were locked. PW4 gave the keys to PW5 who then opened the front door with one of the keys.
>
H PW5 saw the body of a nude female in the hall. PW5 then informed ASP Ahmad Fauzi bin Mohamad Zin, Senior Investigating Officer, IPD Shah Alam (PW14) about the discovery.
>
> PW14 went to the said house and entered the said house together with PW5. Inside the said house PW14 saw a nude body lying on a
I mattress on the floor in the hall. On a comforter, near the dead body, PW14 found a dagger with its sheath (exhibits P11 and P10),

a box of tissue (exhibit P24A), a pair of spectacles and its case (exhibit P25A and P25B) and several other items. Near the toilet he found a blouse, a brassier, a panty and a pair of jeans. In a plastic bag, near the toilet, SP14 found a Photostat copy of a passport under the name of "Venera Ziatdinova" from Uzbekistan (exhibit P29).

PW14 was not 100% sure that the dead body was in fact that of "Venera Ziatdinova" named in exhibit P29 as it was highly decomposed. There was no identification or verification of the name by any possible relatives of the deceased. The Uzbekistan Embassy confirmed that a passport had been issued to one "Ziatdinova" and she was a Uzbekistan citizen. PW14 did not find any evidence of the house having been broken into.

On 18.12.2002 Dr. Mohammad Shafie bin Othman @ Osman (PW9) performed a post-mortem on the said body at Tengku Ampuan Rahimah Hospital, Klang. PW9 testified that the body was that of a female, decomposed and maggot infested. He estimated the death to have occurred between 3 to 10 days prior to the date of post-mortem. According to PW9 the cause of death was stab wounds on the chest. He prepared a post-mortem report (exhibit P8). He testified that there were 11 stab wounds on the body of the deceased, and 5 of them had penetrated the chest wall. He also testified that the stab wounds could have been inflicted with a weapon like exhibit P11.

Primulapathi a/l Jaya Krishnan (PW13), the government chemist, testified that the dagger (exhibit P11) had blood stains which matched the DNA profile of the deceased. PW13 also found that the blood stains on the hand phone, the spectacle and the jeans (which were recovered by PW14 in the living room of the said house) matched the DNA profile of the appellant.

On 18.12.2002 at about 3.50 p.m., K/l Ang Hock Ling (SP10) recorded a cautioned statement under s. 113 Criminal Procedure code from the appellant. The cautioned statement was admitted and marked as exhibit P16 and its transcript was marked as P16T after counsel for the appellant did not object to it.

At the close of the prosecution's case learned counsel for the appellant elected not to make a submission of no case to answer, as he was satisfied, on the evidence adduced by the prosecution, and having had the opportunity to read the written submission of the learned deputy public prosecutor, the prosecution had in fact made out a *prima facie* case on the amended charge.

The learned High Court judge ruled that the prosecution had made out a *prima facie* case against the appellant.

The Defence

The appellant elected to give evidence on oath. In his evidence he said that he met a female Russian, known as Sarah to him, at the Spa Liza De Inn, Petaling Jaya in August 2002. He knew that her name in her passport was Venera Ziatdinova. When the appellant first met Sarah there she was working as a prostitute, with the dignified job designation of GRO (Guest Relations Officer). He became one of her clients. There were times when he took her out for her service. He either took her to a hotel or to his house to have sex.

He began to fall in love with Sarah. He had proposed marriage to her in October 2002 and she agreed to marry him and told him to wait.

In November 2002 Sarah started working in a different entertainment centre, known as Kim Lady, in Puchong as a GRO. He said he went daily to Kim Lady, after his work, to see Sarah as his feelings for her became more intense.

On 12.12.2002, the appellant went to see Sarah at Kim lady at about 8.00 p.m. On that day he had proposed marriage to her and requested her to stop working in order to marry him. Sarah got angry with him and he slapped her. Sarah retaliated and slapped him. The appellant then returned home but went back again to Kim lady at about 3.00 a.m. (on 13.12.2002). He took Sarah to his house ie, the said house, and they arrived at the said house at about 4.00 a.m.

At his house he expressed his feelings and love for her, and had sex with her, that morning, in the hall of his house. He told her that, he was willing to sacrifice his life for her. He then swallowed 19 'UPHAMOL' pills in front of her in order to prove to her, he meant what he had said. He claimed Sarah laughed at him when he swallowed the pills. He then took out a dagger (exhibit P11) and cut his hand 4 or 5 times with it, in front of Sarah. Again, the appellant claimed Sarah laughed at him and accused him of having cheated her, as it was all a mere act by the appellant. Sarah told him that she had come to Malaysia, not because of her love for him, but to earn money and she wanted to earn more money. All along she had been good to him because of the monetary return to her from her sexual services to him. The appellant said he had spent about RM20,000.00 for Sarah's sexual services to him.

The appellant testified that upon seeing and hearing Sarah's cold, humiliating and mocking response to his expression of love for her, he lost control of himself. He then stabbed Sarah with the knife which was in his hand. Sarah attempted to defend herself using her hand and she broke his spectacles. The incident happened very fast and he was not sure what really happened. Sarah fell on to the floor, The incident took place in the hall.

The appellant testified that he did not plan to murder Sarah when he brought her to his house on 13.12.2002. He surrendered himself to the police because he had committed an offence and wanted to be responsible for that.

[3] Learned counsel for the appellant raised three main issues:

(i) that the cautioned statement of the appellant was wrongly admitted;

(ii) that the amended charge was defective;

(iii) the defence of grave and sudden provocation.

Issue (i)

[4] Learned counsel for the appellant submitted that the cautioned statement of the appellant (P16) was wrongly admitted by the trial judge because the caution was defective even if there was no objection taken at the trial court.

[5] The caution as found in P16 (p. 385 of Appeal Record 2) reads:

Adalah menjadi kewajipan saya untuk memberi amaran kepada kamu bahawa kamu tidaklah diwajibkan menyatakan sesuatu atau menjawab apa-apa soalan, tetapi apa-apa juga yang kamu nyatakan, samada sebagai menjawab sesuatu soalan atau tidak, boleh diberi sebagai keterangan.

[6] Learned counsel based his argument on the ground that the caution was not properly administered based on the testimony of the recording officer Ketua Insp. Ang Hock Ling (PW10) who said (p. 45 of Appeal Record 2) as follows:

Sebelum merakamkan percakapannya, saya ada memberi amaran kepadanya. Amaran tersebut "adalah menjadi kewajipan saya untuk member amaran kepada kamu apa-apa kamu ceritakan kepada saya akan menjadi satu keterangan di Mahkamah."

[7] Reference was made to the cases of *Poon Heong v. PP* [1949] 1 LNS 59; *PP v. Badrulsham Baharom* [1987] 1 LNS 72, where the High Court *inter alia* held:

> (1) the cautioned statement was inadmissible on the ground that no proper caution was administered by the recording officer before he recorded the purported cautioned statement from the accused. The omission of the words "to answer any question" rendered the caution defective in law.

[8] The learned deputy replied that in the case of *Mohd Zaiham Mislan v. PP* [2010] 1 CLJ 1 this court held *inter alia* that:

> (1) There is no statutory requirement under the law, be it the Criminal Procedure Code or the Act, that the caution administered by the recording officer to the accused person must be explained. The only essential requirement for the statement to be made admissible is that it must be voluntarily given and to arrive at that finding, the trial judge must assess all the facts and circumstances that surround the giving of the statement. In the present case, since the appellant and SP9 were Malays, the fact that the caution was administered, and the statement recorded, in the Malay language was a non-issue. It was recorded in P27 that the appellant had answered in the affirmative when asked whether he understood the caution and whether he still wanted to make a statement pertaining to the arrest since he understood the caution. The appellant also reaffirmed that he did not supply the statement under threat, promise or inducement.
>
> (2) SP9 had testified that he had explained the caution to the appellant although he had not recorded the explanation factor in the impugned statement. This part of SP9's evidence about him explaining the caution to the appellant was never challenged at any stage of the trial. This issue was only taken up by the appellant at the appellate stage. As SP9 had stated in evidence that he had explained the caution to the appellant, the burden was on the appellant to cross-examine SP9 as to the form and manner of explanation given by him. It is an accepted principle of law that failure by the accused to cross-examine the prosecution witness on a crucial part of the case will amount to an acceptance of the witness's testimony. Of course, the position will be different if there is a legal duty to explain the caution.

[9] He further submitted that in the instant appeal all the wordings of the caution under s. 113 of the Criminal Procedure Code (CPC) were present in P16. It was only in SP10's oral testimony, that he forgot or unintentionally left out the phrase complained of. Learned deputy submitted that P16 should therefore override the oral evidence.

Court's Finding

[10] On reading P16, we are satisfied that the caution found therein has complied with the wordings of s. 113 CPC. The fact that PW10's oral testimony did not mention the words "... or to answer any question but anything you say, whether in answer to a question or not ..." should not render the caution statement (P16) inadmissible because his subsequent oral testimony in court should not override the contemporaneous document P16. More so in this case, PW10 had asked the respondent before the caution statement was recorded, in what language the appellant wished to use and the appellant replied he could speak Bahasa Malaysia. Immediately below after the wordings of the said caution (as appearing at p. 378 Appeal Record), can be seen the recording officer's (PW10) signature on the right side and the appellant's signature on the left side. So the Appellant was given and he understood the caution at the material time. He was therefore not in any way prejudiced at the time of his giving the cautioned statement.

[11] Moreover, PW10 was never cross-examined by counsel during the trial over this issue, and indeed, the issue was never raised in the course of the trial.

[12] We therefore agree with the learned deputy that P16 was properly admitted by the trial judge.

Issue (ii)

[13] Learned counsel for the appellant submitted that the amended charge was defective since the name of the deceased was not mentioned, as was done in the original charge.

[14] The original charge P2 (p. 350 Appeal Record 2) reads:

> Bahawa kamu pada 13hb Disember 2002, di antara jam lebih kurang 5.00 pagi di No. 11A, Jalan USJ 13/5B, di dalam Daerah Petaling, dalam Negeri Selangor Darul Ehsan telah melakukan

A kesalahan membunuh, iaitu menyebabkan kematian ke atas Venera Ziatdinova (Passport No: CA 1713998) dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

B **[15]** The amended charge, P30, dated 17 August 2005 (p. 393 Appeal Record 2) reads:

Bahawa kamu pada 13 Disember 2002, pada jam lebih kurang 5.00 pagi, di No. 11A, Jalan USJ 13/5B, di dalam Daerah Petaling, dalam Negeri Selangor Darul Ehsan telah melakukan kesalahan membunuh, iaitu telah menyebabkan kematian seorang manusia, yang mana identitinya tidak dikenalpasti dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

C

D **[16]** It was further submitted that since no DNA profile was taken by the Police it was therefore difficult to ascertain the identity of the deceased. Reference was made to the case of *Fazal Din v. PP* [1948] 1 LNS 12 where it was held *inter alia*:

(1) that where a case involves the death of a person on which a post-mortem examination has been held, evidence must be given that the body on which the Medical Officer conducted the post-mortem examination was the body of the deceased in respect of whose death the charge has been laid and that because of the failure to do so in this case, the conviction for murder could not be sustained.

E

F **[17]** Learned counsel for the appellant also referred to Ratanlal & Dhirajlal's *Law of Crimes* vol. 2, 2007 where at p. 1702 under paragraph:

G 86. Charge - I (name and office of Magistrate, etc.), hereby charge you (name of accused) as follows:

That you, on or about the ... day of ..., at ... did commit murder by intentionally (or knowingly) causing the death of (specify the name of the deceased), and thereby committed an offence punishable under section 302 of the Indian Penal Code and within the cognizance of the Court of Session.

H

[18] Such omission to name the deceased person is submitted to be a fundamental defect in the charge so as not to be able to sustain a conviction for murder.

I

[19] The learned deputy in his reply submitted that this issue regarding an unnamed deceased is a novel case. But the real issue is one of identity, not name. He then referred to s. 300 of the Penal Code, particularly illustration (d) wherein the words used are:

> (d) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

[20] Another possibility, (which is not found in the PC) is where the Accused kills a stranger whose identity cannot be ascertained in the presence of witnesses.

[21] We are of the following view:

> Looking at the wordings of s. 300 PC for murder, it can be seen the word used to refer to the victim is "person". According to the *Concise Oxford Dictionary*, 11th edn, a "person" is defined as (1) "a human being regarded as an individual".

[22] In the instant appeal, the amended charge in Bahasa Malaysia used the words "... ke atas se orang manusia ..." in place of the words "ke atas Venera Ziatdinova".

[23] According to the *Malay-English Oxford Fajar Dictionary*, 3rd edn the word "manusia" means "a human being".

[24] We are therefore in agreement with the learned Deputy's submission that name is not relevant to the charge. What is important is that a human being's life has been taken. Therefore the failure to put a particular name in the amended charge is not relevant, especially if the body is one beyond recognition. Of course if a name had been put in, it would only amount to referring to a particular identifiable human being. The charge in this instant appeal without naming the deceased is in our view not defective.

[25] In the instant appeal, the appellant was never misled. He knew what he was charged for. His own cautioned statement confirms his involvement in the commission of the offence. The body of the deceased was identified by Insp. Jamil bin Osman (SP5) as the same body sent to the pathologist, Dr. Mohamed Shafie bin

A Othman @ Osman (SP9) who did the post-mortem on the said body. It is undeniable that a dead female human being was found by SP5 and her death was caused by the appellant. If a specific name was not mentioned in the murder charge, it is not defective to warrant the appellant's acquittal.

B

[26] We also agree with the learned deputy that s. 156 of the Criminal Procedure Code (CPC) provides the answer to this kind of situation. Illustration (d) is relevant. It provides as follows:

C

Effect of errors

156. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material unless the accused was in fact misled by that error or omission.

D

ILLUSTRATIONS

(a) …

(b) …

E

(c) …

(d) A is charged with the murder of John Smith on 6 June 1910. In fact the murdered person's name was James Smith and the date of the murder was 5 Jun 1910. A was never charged with any murder but one, and had heard the inquiry before the Magistrate which referred exclusively to the case of John Smith. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

F

G **Issue (iii)**

[27] Learned counsel for the appellant submitted that the murder charge should have been reduced to one of manslaughter under s. 304 PC just because the appellant had surrendered himself to the police which fact clearly mitigated against a guilty mind.

H

[28] The learned deputy replied that just because the deceased refused the appellant's confession of love for her, that would not amount to any provocation. We agree with the learned deputy. We

I

find that in his despair, the appellant turned to intense anger which led him to kill the deceased. There was no provocation as envisaged in exception 1 to s. 300 of the PC. We therefore find the learned counsel for the appellant's argument on this point is devoid of any merit.

[29] For the above reasons, we dismiss this appeal. The conviction and sentence by the High court are hereby affirmed.